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California Natural Resources Agency
Department of Water Resources
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Attn: Craig Cross and Melissa Sparks

Thank you for the opportunity to review and provide comments on the California Department of Water Resources' (DWR) Draft 2016 Integrated Regional Management Grant Program Guidelines, the Proposition 1 Disadvantaged Community Involvement Funding Request for Proposal (RFP) and the 2016 Planning Grant Proposal Solicitation Package (PSP).

The following comments are submitted by the California Indian Environmental Alliance (CIEA) and were developed by the NCRP Tribal Representatives who represent over thirty North Coast Tribes. CIEA coordinates and seeks to increase Tribal Participation in IRWMs. Our goal is that our recommendations will lead to changes in the IRWM Guidelines that can enable more California Native American Tribes to participate effectively and provide assistance to RWMG on how to conduct regular communication and engagement.

CIEA provided initial recommendations in coordination with numerous Tribal staff to the IRWM Guidelines and the DAC Involvement RFP as part of the comments and recommendations submitted by the three regional IRWM RWMGs that we work with. The comments provided here differ in that they are specifically focused on Tribal participation. Tribes have a unique status because of the right of Indian Tribes to self-govern and we seek local and state agencies to understand this relationship so they are able to meet their legal responsibilities with Indian Tribal Governments.

Additions or changes to specific Guideline text are noted by page number and underlined within this document and are included within several theme areas on the pages to follow.

Disadvantaged Community, Economically Distressed Area, Underrepresented Communities and the relation to Native American Tribes

The Draft 2016 Proposition 1 IRWM Grant Program Guidelines are structured well to incorporate the new program requirements and Plan Standards and to allow for regional variances to identify and include economically disadvantaged communities, under-represented communities and those Native American Tribes, or California Indian Tribes, who choose to self-identify as Disadvantaged Community, Economically Distressed Area or Underrepresented Communities.

Recommendations:

- In keeping with the intent of Proposition 1 we ask that the Guidelines clearly state that “disadvantaged communities (DAC), economically distressed areas (EDA), and underrepresented communities are collectively referred to as DACs within these documents and for the purposes of the IRWM Program.” We encourage that this be clearly spelled out within each of the three documents when the term DAC is first introduced and then subsequently it will be clear when DACs is used which groups it refers. The recommendations below include are several specific locations that require this language to be included.
- **P. 63 Disadvantaged Communities:** In this section there is a discussion of the multiple definitions of a DAC that exist in California statutes. We recommend that in this section the guidelines repeat that “disadvantaged communities (DAC), economically distressed areas (EDA), and underrepresented communities are collectively referred to as DACs within this document and for the purposes of the IRWM Program,” and that it also state that Tribes may also identify as stakeholders, Underrepresented Communities, Economically Distressed Areas and/or Disadvantaged Communities.” In the Proposition 1 IRWM Grant Program Guidelines we also recommend these statements be included in section II. **Introduction and Overview**, section **B. Funding Opportunities**, under the bulleted sections for **“Disadvantaged Community Involvement Program”** and then in the **“Implementation Grant Program”** section.
- **Appendices:** We recommend that the same articulation of the relationship between these terms be included within **Appendix B – Definitions, Appendix E – Disadvantaged Communities**, and **Appendix F - Economically Distressed Area**. We note that there is a definition offered for Economically Distressed areas, that no definition is offered for Underrepresented Community and we recommend some additional guidance be provided for the Disadvantaged Community definition. We agree that each RWM will submit to DWR which communities are eligible as Economically Distressed Area using regionally developed criteria, with DWR approval. We do however recommend that some guidance be included and that a wide definition be included in Appendix B. We recommend the following three definitions be included in Appendix B:

Disadvantaged Community – a community with an annual median household income that is less than 80 percent of the Statewide annual median household income (Water Code §79505.5 which cross references to Water Code §79505.5). Disadvantaged communities (DACs), economically distressed areas (EDAs) and underrepresented communities are collectively referred to as DACs in this document. As participants within the IRWM program Tribes may also self-identify as stakeholders, Underrepresented Communities, Economically Distressed Areas and/or Disadvantaged Communities.

Economically Distressed Area – a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less, with an annual median household income that is less than 85 percent of the statewide median household income, and with one or more of the following conditions as determined by the department: (1) financial hardship, (2) Unemployment rate at least 2 percent higher than the statewide average, or (3) low population density. (Water Code §79702 (k)) *[No Change is recommended for this section]*.

Underrepresented Community -a community with a history of disproportionately less representation in water policy and/or in funded IRWM projects. A second definition of an underrepresented community is a group that does not meet the state definition of a Disadvantaged Community (DAC) or Economically Distressed Area (EDA) but are below the median household income for the IRWM region. DWR anticipates that each region will self-define this community.

Stakeholders and California Native American Tribes

The IRWM program administered by DWR is unique in that it brings together diverse stakeholders who have historically not had an opportunity to collaborate in the management of their regional watersheds. California Indian Tribes are governments that have a long history with the federal government that has a fiduciary trust responsibility. In many regions Tribes working with local agencies and counties is relatively new. Because of the importance of Tribes working with local agencies, cooperative relations have been encouraged by federal and state agencies. The recommendations below assist in clarifying the unique legal status of Tribes and to support RWMGs in effective Tribal engagement.

During the Proposition 84 IRWM public comment period DWR received and responded to comments that Tribes are not stakeholders; that Tribes are governments with unique political sovereign status. To reflect that information the guidelines were changed in several areas to say “Native American Tribes and Stakeholders.” We appreciate the attempt to differentiate Tribes from other stakeholders, however the request was inconsistently applied and as written, the intent could be misunderstood and misapplied in the resulting regional IRWM programs.

There are additionally numerous cases where the term “stakeholders” is used alone, other cases where “Native American Tribes and Stakeholders” are used, and still others where “Native American Tribes and other stakeholders” is used. This inconsistent application of terms is confusing and could result in a misinterpretation of the intent of the IRWM Guidelines.

Recommendations:

- We recommend that the regional guidelines clearly state the relationship between California Native American Tribes and other stakeholders and that the guidelines apply a consistent use of “Native American Tribes and other stakeholders” whenever stakeholders is included. Specifically the comments below highlight areas that stand out in their need for related adjustments
- Pg. 5-6, **II. Introduction and Overview** – In this section listing relevant statutes, legislation and executive orders we recommend adding information regarding the federal Executive Order 13175, Executive Order B-10-11, SB18 and to provided additional information on AB52 to better assist local governments, collaborative agencies and the RWMGs in understanding their responsibilities with California Indian Tribes. The following is the recommended text to include:

Executive Order 13175 reaffirms the Federal government's commitment to Tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian Tribes and respect Tribal sovereignty as they develop policy on issues that impact Indian communities. This federal EO is in keeping with the Federal Trust Responsibility and treaties entered into by the federal government with Native American Tribes and affects all federal agencies as well as state agencies, programs or projects that receive federal funds.

Executive Order B-10-11: Requires that, “Every state agency and department subject to executive control is to encourage communication and Consultation with California Native American Tribes.” Per this order, it is the policy of the State to work with Native American Tribes (federally and non-federally recognized) on a government-to-government basis to address issues concerning Native American Tribal self-government and Tribal trust resources. Because the IRWM program is administered by state agencies and involves other agencies that are funded by state and/or federal funds the RWMG, whether a county, a water agency or other eligible lead agency, shall communicate and consult with federally and non-federally recognized Tribes within the IRWM region, or those that have historical use areas or cultural resources within the IRWM Region. In keeping with this EO, the policy of the state of California, the RWMG will uphold the right of Native American Tribes to self-govern and exercise inherent sovereign powers over their members, aboriginal territory, and resources.

SB 18: Requires cities and counties to notify and consult with California Native American Tribes about proposed land use planning decisions for the purpose of protecting

Traditional Tribal Cultural Places at the earliest possible point in the planning process to avoid potential conflicts.

AB 52: Requirement amending Public Resources Code §21080.3.1 to require the CEQA lead agency to consider project effects on Tribal cultural resources and to conduct Consultation with California Native American Tribes at the earliest possible point in the planning process. Additional information on Tribal Consultation and AB 52 can be found through the links in Appendix A, which includes an example Tribal Consultation Policy that was developed by the Karuk Tribe and guidance from the Office of Planning and Research.

- In **Appendix B – Definitions: We recommend that** “Native American Tribe” and “Stakeholder” definitions be amended for clarity and consistency as follows:

California Native American Tribe – all Indigenous Communities of California, which are on the contact list maintained by the Native American Heritage Commission, including those that are federally recognized, non-recognized and Tribal communities. California Native American Tribe and California Indian Tribe are used interchangeably in this document. Additionally, because some water bodies and Tribal boundaries cross State borders, this term may include Indigenous Communities in Oregon, Nevada, and Arizona that are impacted by water in California. Tribes may self-identify themselves as stakeholders, Underrepresented Communities, Economically Distressed Areas and/or Disadvantaged Communities. Tribes are sovereign nations, and as such coordination with Tribes is regularly conducted on a government-to-government basis. Native American Tribes exercise inherent sovereign powers over their members, territory and resources. Additional resources and information on outreach, communication and Consultation with CA Native American Tribes can be found in Appendices A and C.

Stakeholder – an individual, group, coalition, agency, or others who are involved in, affected by, or have an interest in the implementation of a specific program or project. Tribes may self-identify themselves as stakeholders.

- Pages 61-62, **Native American Tribe and Stakeholder Involvement**, We recommend that the regional guidelines clearly state the relationship between California Native American Tribes and other stakeholders in this section by including the following:

Within the IRWM program Native American Tribes, like federal and state agencies are included as “stakeholders.” Tribes are however, separate and independent sovereign nations as acknowledged in the U.S. Constitution. This sovereignty is inherent and flows from the pre-constitutional and extra-constitutional governance of the Tribe. This established governmental structure recognizes the sovereign and political independence of Tribal nations and its members and has also been recognized by the State of California. Pursuant to the Executive Order B-10-11, the State “recognizes and reaffirms

the inherent right of these Tribes to exercise sovereign authority of their members and territory.”

- Page 62, **Native American Tribe and Stakeholder Composition**, Under the bullet of Native American Tribes we wish to amend it to read as follows:

Native American Tribes- Tribes are sovereign nations, and as such coordination between with Tribes is on a government-to-government basis

Notification, Communication and Consultation with California Native American Tribes

It is important for all members of the IRWM decision-making body, local governments and agencies to understand the difference between notification, communication and Consultation with California Indian Tribes and to understand that all Tribes are different and may have different policies, protocols and procedures for Consultation. While the guidelines include Consultation, and provides resources in the Appendix A, it is not clear in the document when Consultation is required. The title of Appendix C is Native American Tribe Notification however, within the text there is no use of the word Notification; instead Consultation and communication is used throughout.

Recommendations:

- We appreciate that DWR has included the Consultation Policy of the Karuk Tribe as an appendix and recommend that as other Tribal Consultation policies are available that DWR post these also.
- **That Appendix C, Native American Tribe Notification** be titled more inclusively to read “Native American Tribe Notification, Communication and Consultation” and that this relationship be spelled out.
- That DWR work with California Native American Tribes to provide language that clarifies the difference between notification, communication and Consultation with California Indian Tribes and include this information throughout the three documents. This is in keeping with EO B-10-11 that requires “every state agency and department subject to executive control is to encourage **communication and Consultation** with California Native American Tribes.” [emphasis added] which separates “communication” from “Consultation.”
- **Appendix C, Native American Tribe Notification:** That the guidelines include summaries from SB18, EO 13175, EO B-10-11, and AB 52.
- That DWR ensure and assist the governance body of each IRWM, and participating cities and counties to engage Tribes within their IRWM and those Tribes with historical use

area and/or cultural interest in communication and Consultation on all activities of the IRWM including the creation of or update to the IRWM Plan, IRWM governance structure, project prioritization and selection.

- That the three documents, and in particular **Appendix C** of the Guidelines recommend giving notice to California Native American Tribes as early as possible in the planning process, ideally while projects are being developed, and not just when CEQA or other requirements for communication and Consultation with Tribes is triggered. This is in keeping with EO B-10-11, EO 13175, SB18 and AB 52.
- That **Appendix C** be expanded to include information about requirements for notification, communication and Consultation other than solely the requirements of AB52. We recommend this section also include the following:
- “Native American Tribes, like federal and state agencies are included as “stakeholders.” Tribes are however, separate and independent sovereign nations as acknowledged in the U.S. Constitution. This sovereignty is inherent and flows from the pre-constitutional and extra-constitutional governance of the Tribe. This established governmental structure recognizes the sovereign and political independence of Tribal nations and its members and has also been recognized by the State of California. Pursuant to the Executive Order B-10-11 and consistent with federal EO 13175 and AB52, the State “recognizes and reaffirms the inherent right of these Tribes to exercise sovereign authority of their members and territory.”

General Program Requirements

Tribal are operating under federal status and do not have the same requirements as other stakeholders. Tribes are separate and independent sovereign nations as acknowledged in the U.S. Constitution. This sovereignty is inherent and flows from the pre-constitutional and extra-constitutional governance of the Tribe. This established governmental structure recognizes the sovereign and political independence of Tribal nations and its members and has also been recognized by the State of California. Therefore state requirements do not apply on Tribal lands or within Tribal jurisdiction.

Recommendations:

- That DWR continue to work with federal agencies in coordination with California Native American Tribes to seek solutions to state compliance. There are several state requirements which remain a barrier to full Tribal engagement and participation in the IRWM program.

IRWM Governance

We remain concerned the CA Native American Tribes are excluded or discouraged from participating by some RWMGs in their regional IRWM. We maintain that in keeping with recognition of Tribal sovereignty Pursuant to the Executive Order B-10-11 and consistent with federal EO 13175, AB52 the State “recognizes and reaffirms the inherent right of these Tribes to exercise sovereign authority of their members and territory.” Representation in the region established officially through the IRWM governance structure is the best way to ensure Tribes can represent their interests and those of their members.

Recommendations:

- We recommend that DWR explore options wherein Tribes can participate as direct recipients of funds. Proposition 1 does not explicitly state that Native American Tribes cannot receive funds. To this end we ask for continued review of the interpretation of the bonds and legal instruments that the IRWM program is governed by.
- pg. 72, in Table 8 – **Submittal Materials and Reviewer Information, Governance, Evaluation Criteria:** we recommend revising the following bullet to include examples of stakeholders who are often underrepresented in the governance structure as follows:

Does the decision making process allow for the participation of smaller entities, DACs and California Native American Tribes?

- P 41, “**Description of how governance addresses and ensures various activities,**” should include all those Tribes impacted by the proposed activities. We therefore suggest that bullet 6 “Native American Tribes that have lands within the region” be changed to:

Native American Tribes that have lands, watersheds that are impacted by proposed activities or historical use areas and/or cultural resources within the region.

- p. 40, **III. GUIDANCE FOR IRWM PLAN STANDARDS, Governance:** We recommend that this section include more encouragement for a broad range of stakeholders in the governance structure and insist explicitly that California Native American Tribes shall be included in the list of those who should have a choice to participate in the decision making body of the RWMG. This follows as Tribes are separate and independent sovereign nations as acknowledged in the U.S. Constitution, federal Executive Order 13175 and Executive Order B-10-11 wherein the State “recognizes and reaffirms the inherent right of these Tribes to exercise sovereign authority of their members and territory. It therefore is appropriate that Native American Tribes are able to represent their members and interests as part of the regional decision-making and governance body of their regional IRWMs.

Interregional Communication

This section does not include communication with Native American Tribes specifically, even when communication with other stakeholders are listed.

Recommendation:

- Pg. 42, **Guidance for IRWM Plan Standards, Governance, Effective communication – both internal and external to the IRWM Region:** We therefore recommend that the last sentence of this paragraph be changed to: “How does the governance structure foster communication with the different functional groups within the RWMG, with project proponents, with general stakeholders, with neighboring RWMGs, with California Native American Tribes, state and federal government agencies, and the general public?”

Coordination

This section is recognizing the regulatory decisions of state and federal agencies and that Native American Tribes may also have a regulatory responsibility. The recommendations below recognize Tribal jurisdiction and that Tribal historical areas and cultural resources are in multiple IRWM regions and cross jurisdictional boundaries.

Recommendation:

- Pg. 38, **Section 15. Coordination:** We recommend the inclusion of “California Native American Tribes” so the final bullet in this section reads as follows:

Identification of areas where a State agency or other agencies may be able to assist in communication, cooperation, or implementation of IRWM Plan components, processes, and projects, or where Tribal, state or federal regulatory decisions are required before implementing the projects.

- p. 51 Identification of Neighboring or Overlapping IRWM Regions (if any): In relation to the considerations within this section we also would like this section to acknowledge Tribes may need to participate in multiple IRWMs. Further, because Proposition 1 did not provide funding for interregional support as did Proposition 84, we request that DWR assist Tribes in identifying funding for those in multiple jurisdictions and revisit the funding that is eligible from Proposition 1 or other state agency programs to support interregional participation.

Project & Preparatory Benefits to Critical Water Issues

Project Review Process Section, under **Guideline Review Factors**: We provided the following recommendations in order to ensure understanding that formal projects and work that leads to a formal project on behalf of DAC and Native American Tribal communities, may be funded by the IRWM Program.

Recommendations:

- P. 49 *D*, **Project Review Process Section**, under **Guideline Review Factors**: That this section be amended as follows:

Specific benefits to critical DAC water issues: Water Code §10540. (c)(7) states that identification and consideration of water-related needs of DACs in the area within the boundaries of a region is among the basic items an IRWM Plan must address. DAC projects may be a formal project or may include work that leads to a formal project such as a needs assessment, initial engineering work (design or study) to define a project, or feasibility studies that may lead to a project. Projects that specifically address such needs should be promoted in the project selection process. See Volume 1, Appendix E for additional information regarding DACs.

- Pg. 49, **Section E. Specific benefits to critical water issues for Native American Tribal communities**: That this section be amended as follows:

The project review process should consider if the project helps to address critical water supply and water quality needs of Native American Tribal communities within the IRWM region. Such projects may also include preparatory work that leads to a formal project such as a needs assessment, initial engineering work (design or study) to define a project, or feasibility studies that may lead to a project. Projects that specifically address such needs should be promoted in the project selection process.

Remove Native American Communication Improvement as Example of Qualitative Measurement

Pg. 45 **Measuring Objectives**: In example 3 the Guidelines use “Improvement in Communication between RWMG and Native American Tribes” as an example of an acceptable Qualitative Measurement. The second paragraph beneath the chart states that while a “quantitative measurement could be constructed, it would not give much more insight than the qualitative expression.”

This is not an appropriate example because we do want to encourage quantitative measurements if possible. Numerical indicators that could easily be gathered include an increase in the number of contacts who open emails, the number of Tribal staff and/or representatives on the contact lists, an increase in the number of Tribes that attend RWMG

Meetings, those that submit projects and/or those that participate in plan chapter submission. We should encourage RWMGs to gather documentation of outreach and engagement especially in the area of Tribal engagement and Tribal participation in IRWMs because Tribes are underrepresented in regional IRWM participation.

Recommendation:

- We recommend that DWR does not use Native American Tribal Participation, Tribes or Tribal communities as an example of Qualitative Measurement.

Environmental Justice

California Native American Tribes needs can be considered Environmental Justice Concerns and are separate from other stakeholders with these concerns.

Recommendation:

- Pg. 49, **Section F. Environmental Justice Considerations:** We recommend that Native American Tribes be included in this section as follows:

“engagement and participation of stakeholders including DACs and Native American Tribes in the decision making process can be a proactive step in understanding project impacts that can become EJ concerns.”

Data Management and Reporting

Tribes have the right to decide what data is publically available due to sensitive cultural issues.

Recommendation:

- That the guidelines are clear that due to sensitive cultural issues Tribes have the right to determine what data will be publically available.

Again, thank you and all of the staff at DWR for all of your work and support. If you have any questions please contact me.

Sincerely,

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